IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Shri Rampuri & Another Vs. State of Rajasthan
(D.B. Criminal Appeal No.1102/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 31-7-2002 in Sessions Case No.105/2001 passed by Shri Kamal Kumar Bagri, RHJS, Additional Sessions Judge (Fast Track) Sikar.

Date of Judgment: August 06, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for the appellants.
Mr. Kamlendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The factual matrix leading to the filing of this appeal gives an account of a horrid episode wherein a husband doused his wife with kerosene and set her ablaze. In the instant appeal the husband and mother-in-law of deceased wife have called in question the judgment dated July 31, 2002 of the learned Additional Sessions Judge (Fast Track) Sikar convicting the appellants under sections 302 and 498A of the Indian Penal Code.

2. It is the prosecution case that on May 14, 2001 Rukma, who was admitted to SK Hospital Sikar, gave Parcha Bayan (Ex.P-28) wherein she stated that she was married to Shri Ram Puri some five years back. Her husband and in-laws used to harass her in connection with demand of dowry.

In the morning of the said day her husband poured kerosene on her and set her ablaze. Her mother-in-law assisted her husband in committing the cruel act. On that parcha bayan a case was registered and investigation commenced. Statements of Rukma also recorded by a Magistrate. In the course of investigation Rukma succumbed to her injuries and section 302 IPC was added. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Sikar. Charges under sections 302 and 498A IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 21 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. Dr.S.S.Sharma (Dw.1) was examined in support of defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. The case of prosecution is primarily based on the dying declaration (Ex.P-20) of the deceased which was recorded by Shri R.C.Ramdhari, Additional Chief Judicial Magistrate Sikar (Pw.16). Learned counsel for the appellants took us through the dying declaration and canvassed that it could not have been relied. It is alternatively urged that even if dying declaration is believed the case does not travel beyond 304 Part II IPC. Controverting the submissions of learned counsel for the appellants on the other hand, learned Public Prosecutor supported the impugned finding of the learned trial court.

4. We have pondered over the submissions advanced before us. Shri R.C.Ramdhari (Pw.16) deposed that on May 14, 2001 he was posted as Additional Chief Judicial Magistrate Sikar and he recorded dying declaration of Rukma (Ex.P-20). At the time of giving statement Rukma was fit and conscious. Although learned Magistrate was cross examined at length but nothing could be elicited that could make a dent in the prosecution case. In the dying declaration, Rukma stated that appellant Shri Ram Puri sprinkled kerosene on her and set her ablaze. As per postmortem report (Ex.P-21) deceased sustained 100% burn injuries and in the opinion of Dr. S.S.Sharma (Pw.13), who performed autopsy on the dead body, Rukma died because of neurogenic & Ryprolmnic shock as a result of antemortem dry flame burn injuries.

5. It is an admitted case that the appellant himself had sustained burn injuries which were examined by Dr.S.S.Sharma (Dw.1) vide injury report (Ex.D-82), according to which following injuries were found on the person of the appellant:-

> "There are superficial & deep burn with buster to malin on left side face, front of chest, left foot and right forearm about 20% caused by dry heat. Scalp hairs are partially burnt."

6. From the totality of circumstances it appears that after the quarrel with Rukma, appellant poured kerosene on her and ignited match stick but when the flames were up he suddenly and frantically made attempt to save her from the tongues of flames and himself received burn injuries. This conduct cannot be seen divorced from the totality of circumstances. Very probably the appellant would not anticipated that the act done by him would have escalated to such proportion that she might die. If he had ever

intended her to die he would not have alerted his senses to make effort to rescue her and took her to the hospital. We are inclined to think that all that the appellant thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and went to the fatal extent. The appellant would not have intended to inflict the injuries which she sustained on account of his act. Therefore we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder. In a similar situation the Apex Court in Kalu Ram Vs. State of Rajasthan (2000)10 SCC 324 altered the conviction from 302 to 304 IPC.

7. It also appears that co-accused Jhabar Puri, father-in-law of deceased Rukma, was also tried along with the appellants but he stood acquitted. Case of appellant Ratudi Devi (Mother-in-law) is not distinguishable with that of Jhabarpuri and she is entitled to benefit of doubt. In so far as the charge under section 498A is concerned we find from the explanation of the appellant husband that the incident flared up when the appellant husband asked the deceased to take oath in the temple that she was not involved in the theft of anklet. We are thus of the view that charge under section 498A IPC is not established beyond reasonable doubt.

8. As a result of above discussion, we dispose of instant appeal in the following terms:-

(i) We allow the appeal of appellant Ratudi Devi and acquit her of the charges under sections 302 and 498A IPC. Smt. Ratudi Devi, who is in jail shall be set at liberty forthwith, if she is not required to be detained in any other case.

(ii) We partly allow the appeal of appellant Shri Ram Puri and instead of section 302 we convict him under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period of more than six years, the ends of justice would be served in sentencing him to the period already undergone by him in confinement. We however acquit him of the charge under section 498A IPC. Appellant Shri Ram Puri, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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